IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :
THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 16577 of 2003(W)

PETITIONER:
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1. ARUMUKHAN K.,
BAND HAVILDAR NO.3301, HEAD QUARTER COMPANY,
MALABAR SPECIAL POLICE, MALAPPUARAM.

2. SASIDHARAN O.K.,
BAND HAVILDAR NO.4077,
-DO- -DO-.

3. BALAKRISHNAN K., BAND P.C.NO.4075,
-DO- -DO-.

4. KUNJIRAMAN T.K,, BAND P.C.NO.4229,
-DO- -DO-.

5. BHAKTHAVALSALAN M., BAND P.C.5267,
-DO- -DO-.

6. HARIDAS K., BAND P.C.5268,
-DO- -DO-.

7. PURUSHOTHAMAN K., BAND P.C.NO.5269,
-DO- -DO-.

8. SADANANDAN, BAND P.C.NO.5270,
-DO- -DO-.

9. MOHANDAS P., BAND P.C.NO.5271,
-DO- -DO-.

10. PRAKASHKUMAR P., BAND P.C.NO.5272,
-DO- -DO-.

11. SURYACHANDRA BABU V.,BAND P.C.NO.5273,
-DO- -DO-.

12. ASHOK KUMAR M., BAND P.C.NO.6006,
-DO- -DO-.

13. RAVINDRAN K., BAND P.C.NO.5314,
-DO- -DO-.

14. MADHUSUDHANA PILLAI C.,
BAND P.C.NO.5307, HEAD QUARTER COMPANY,
MALABAR SPECIAL POLICE, MALAPPURAM.

15. ASHARAF P.C., BAND P.C.NO.5308,
-DO- -DO-.

16. SUSHEEL KUMAR P., BAND P.C.NO.5309,

-DO- -DO-.

17. MONCY K.J., BAND P.C. NO.7472,
-DO- -DO-.

18. SUNDARAN V., BAND P.C.NO.6620,
-DO- -DO-.

19. ARAVINDAN C.K., BAND P.C.NO.8031,
-DO- -DO-.

20. ABDUL AZIZ K.T., BAND P.C.NO.5445,
-DO- -DO-.

21. ABDUL KARIM C.P., BAND P.C.NO.5959,
-DO- -DO-.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY ITS SECRETARY TO GOVERNMENT,
DEPT. OF HOME AFFAIRS, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.

3. COMMANDANT,
MALABAR SPECIAL POLICE, MALAPPURAM.

BY GOVERNMENT PLEADER SMT.T.B.REMANI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.16577/2003)

EXT.P1: TRUE COPY OF GOVT. ORDER DT. 25/11/98.

EXT.P2: DO. DT.01/02/1977.

EXT.P3: TRUE COPY OF COMMUNICATION FROM R2 DT. 1/8/92.

EXT.P3(A): TRUE COPY OF PROCEEDING DT. 5/1/96.

EXT.P4: TRUE COPY FO GOVT. ORDER DT. 28/2/95.

EXT.P5: TRUE COPY OF PROCEEDING DT. 7/3/95.

EXT.P5(A): TRUE COPY OF PROCEEDING DT. 2/6/99.

EXT.P6: TRUE COPY OF ORDER DT. 8/11/99.

EXT.P7: TRUE COPY OF GOVT. ORDER DT. 16/10/2000.

EXT.P8: TRUE COPY OF PROCEEDING DT. 9/8/2000.

EXT.P9: TRUE COPY FO LETTER DT. 11/7/2000.

EXT.P10: TRUE COPY OF PROCEEDING DT. 9/3/2000.

EXT.P11: TRUE COOPY OF GOVT. ORDER DT.01/04/2003.

EXT.P12: TRUE COPY OF ORDER DT. 1/7/99.

EXT.P13: TRUE COOPY OF ORDER DT. 10/4/1991.

EXT.P14: TRUE COPY OF ORDER DT. 21/11/2001.

EXT.P15: TRUE COPY OF COUNTER AFFIDAVIT FILED BY R1.

EXT.P16: TRUE COPY OF ORDER DT. 21/2/76.

EXT.P17: TRUE COPY OF GOVT. ORDER DT. ½/1977.

EXT.P18: TRUE COPY OF GOVT.ORDER DT. 21/11/1981.

EXT.P19: TRUE COPY OF LETTER DT. 14/2/2001.

EXT.P20: TRUE COPY OF GOVT. ORDER DT. 15/4/2005.

EXT.P21: TRUE COPY FO LETTER DT. 13/3/95.

EXT.P22 (IA.13660/2006) TRUE COPY OF ORDER DT. 30/5/2003 IN IA.2082/03.

EXT.P22: TRUE COPY OF REPLY DT. 17/1/2007.

EXT.P23: TRUE COPY OF GOVT. ORDER DT. 25/5/79.

ANNEXURE i : COPY OF AFFIDAVIT OF ADV.SRI.N.SUGATHAN.

A.K. Basheer, J.

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W.P(C) No. 16577 of 2003

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Dated this the 22nd day of November, 2007.

J U D G M E N T

Is Ext.P1 order issued by respondent No.1 taking away the benefit of second and third higher grades granted to the petitioners, legal and valid?

2. The above question has come up for consideration in this writ petition filed by 21 Band Havildars/Police Constables enlisted in the Malabar Special Police, Malappuram.

3. Petitioners were enlisted in service between 1968 and 1986. In fact petitioners 1, 3, 4 and 5 have already retired from service. It is also reported that petitioner No.3 has since expired. It is not in controversy that in the Band Police Wing in Malabar Special Police, the hierarchy of posts consists of Band Police Constables, Havildars, Band Police Sub Inspector and Band Armed Police Inspector as against Police Constable, Head Constable, Assistant Sub Inspector, Sub Inspector and Circle Inspector in the Police Department.

4. It may at once be noticed that there is no category of post of Assistant Sub Inspector in the Band Wing of MSP. It is also beyond controversy that time bound higher grades were being granted to the personnel in the Band Wing of the Malabar Special Police by the Government through executive orders. Pursuant to

the pay revision order of the year 1998 (G.O(P)3000/98/Fin dated 25/11/1998), the personnel in Band Wing of the Malabar Special Police were granted second and third higher grade promotions. In this context it may be noticed that the first higher grade will be sanctioned on completion of service of 7 years, the second on completion of 15 years and the third on completion of 23 years.

5. It is the admitted position that in the case of petitioners, when they became eligible for second higher grade promotion, they were placed in the scale of pay of Band Sub Inspector (5500-9075). Similarly those candidates who became eligible for third higher grade promotion on completion of 23 years were placed in the scale of pay of Rs.6500-10550 which is equivalent to the scale available to the Circle Inspector in the general wing. Therefore the respondents took the view that the petitioners had got an undue benefit while granting the second and third higher grades, inasmuch as they had got a jump in their pay. According to the respondents, petitioners ought to have been placed in the scale of pay of Assistant Sub Inspector rather than in the scale of Sub Inspector while granting the benefit of second time bound higher grade. Similarly, on completion of 23 years, they ought to have been placed in the scale of pay of Sub Inspector only.

6. Learned Government Pleader points out that the anomaly or mistake which had crept in while sanctioning second and third time bound higher grade to the petitioners was rectified by the Government in Ext.P11. She contends that petitioners are not justified in impugning

Ext.P11 order. They cannot be heard to say that the mistake that had occurred because of oversight cannot be rectified.

7. Per contra, it is contended by learned counsel for the petitioners that the respondents cannot be heard to say that they were not aware that there was no post of Assistant Sub Inspector in the hierarchy of posts. In Ext.P1 General Pay Revision Order it was abundantly made clear that an employee who becomes qualified to get time bound higher grade would be eligible to get the scale of pay attached to the promotion post. It is the contention of the petitioners that the promotion post available to a Band Havildar in the hierarchy of posts in MSP is that of Sub Inspector. The post of Assistant Sub Inspector is conspicuously absent in the said hierarchy. Therefore on completion of 15 years of service an incumbent (Band Havildar in this case) would be eligible to be placed in the scale of pay of the next promotion post viz., Sub Inspector of Police. That was in fact what had happened in the case of the petitioners. Therefore the benefits that were given to the petitioners ought not to have been taken away by the stroke of a pen, as has been done in Ext.P11, even without affording an opportunity to them to be heard.

8. The above contention is not without force. But it has to be noticed that no employee can crave or aspire for more than what he would be legitimately entitled to get. At the same time, respondents cannot feign ignorance and contend for the position that a mistake had crept in while granting second and third higher grade promotions to

the petitioners, and that promotions were given overlooking the fact that the category or post of Assistant Sub Inspector was not available in the Band Wing of MSP. It cannot also be contended that the benefits that had been given to the petitioners are therefore liable to be taken away. The Government ought to have at least afforded an opportunity to the petitioners to be heard. Petitioners were under a legitimate expectation that going by the hierarchy of posts they were entitled to get the benefit of the scale attached to the post of Sub Inspector , especially in the absence of the category of Assistant Sub Inspector. In this context it may also be noticed that the promotion avenues of persons like the petitioners in this particular wing of the force are very scarce and minimal.

9. It may be true that in the general Executive Branch, the post of Assistant Sub Inspector is available. The omission to include such a category in this particular wing (MSP) may not be without significance. The Government in its wisdom might have consciously excluded that category. The fact remains that the personnel in this particular Wing had been granted this benefit on the basis of the hierarchy of posts. Anyhow this aspect of the matter ought to have been kept in view by the Government before issuing Ext.P11 order. That not having been done and the petitioners not having been given an opportunity to be heard before issuing Ext.P11 order, I am satisfied that the petitioners are entitled to succeed.

10. In any view of the matter the Government was not justified

in issuing Ext.P11 order with retrospective effect directing to regulate the higher grades already granted in the scale of pay of Rs.4000-6090, 4500-7000 and 5500-9075 for first, second and third higher grades respectively. It is made clear that the benefits that have been granted to the petitioners shall not be denied to them. It is further clarified that this benefit will be confined to the petitioners only and that it shall not be available to anyone else who has not challenged Ext.P11.

Ext.P11 is quashed to the above extent only. Original Petition is allowed as above.

A.K. Basheer
Judge.

an.

A.K. Basheer, J.

W.P (C).16577 of 2003

Judgment

22/11/2007